IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4299 OF 2004

Shankar Dhanappa Rachgond ..Applicant.

V/s.

The State of Maharashtra .. Respondent.

Shri Shekhar A. Ingawale for Applicant.
Shri K.V. Saste, APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : 18.10.2004

PC :-

. Heard the learned counsel for the parties. Perused the record.

. It is contended that the Applicant's brother, who was also implicated in the alleged offence registered in connection with C.R. No. 28/2004, has been enlarged on bail by the trial court on the following reasons :-

> "I have seen the report submitted by the I.O. and the original case papers on record. It appears from the police papers on record that there is absolutely no evidence to show that the seized Ganja plants were in conscious

possession and within exclusive knowledge of the applicants as the I.O. has not recorded the statements of adjoining land owners of said land. It did not appear from the F.I.R. and other police papers on record that the police officer who takes down the information in writting sub-section (1) of Sec. 42 of NDPS Act or records the grounds for his belief under the provision thereto has forthwith not sent the copy therefore to this immediate official superior. It did not appear from the police papers on record that the police officer who has arrested and made seizes had not sent full report of all the particulars within 48 hours next to the arrest and seizer of the accused to his immediate official superior. Hence, prima facie it appears from the evidence collected by the investigating officer that the mandatory compliance u/s. 42(2) and 57 of NDPS Act has not been complained. It is well settled that non-compliance with these mandatory provisions u/s. 42(2)(2) & 50 of NDPS Act, regarding search and seizes entitled the applicant/ accused to bail. Under these circumstances, I

think that this is fit case where the benefit of bail shall be given to the applicant/ accused."

. Whereas the application preferred by the present Applicant has been rejected on the ground that section 57 of the Act, was not applicable in the present case and so far as non-compliance of section 42 (2) is concerned, that can be examined at the trial, but cannot be a ground for bail. I find no basis to sustain this approach. Once the recovery is to be discarded because of non-compliance of sections 42 and 57 of the Act then on the same ground the applicant will have to be released on bail on parity. The application, therefore, succeeds on the following terms :-

The applicant is enlarged on bail in connection with C.R.No.28/2004 registered with Umadi Police Station, Sangli on executing personal bond in the sum of Rs. 30,000/- (Rs. Thirty thousand only) with two local sureties in the like amount with further condition that he shall not commit any such type of offence

in future nor shall hamper the trial in any manner whatsoever or tamper with the prosecution evidence.

The applicant shall also make himself available as and when required by the investigating officer or the trial court and shall not abscond.

. Order accordingly.

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